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10/539,642	05/18/2006	Brian John Franklin	107687.00008	2913
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JACKSON WALKER LLP 901 MAIN STREET SUITE 6000 DALLAS, TX 75202-3797			EXAMINER KING, FELICIA C	
			ART UNIT 1794	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/539,642

**Applicant(s)**

FRANKLIN, BRIAN JOHN

**Examiner**

FELICIA C. KING

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is written in response to Applicants Remarks/Arguments dated 3/9/09.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 35, 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Stewart (US 5,876,778).**

**Regarding Claims 35 and 41:** Stewart discloses an additive or fat substitute [col. 1, lines 5-8] containing dry, hulled, whole granular or cracked bean (bean powder); or dry bean meal or bean flour, as the primary element in the additive [col. 2, lines 45-57] where the primary element is 62% of the total weight of the additive [col. 6 Table]; where the bean powder can be used in combination with a vegetable [col. 2, lines 45-57]; including as a protein source, bean powder, containing more than 20% protein by weight [col. 3, lines 3- 15]; as water soluble hydrocolloids: a starchy vegetable composed primarily of complex carbohydrates [col.3, lines 26- 34] and modified cellulose which is methyl cellulose [col. 3, lines 26, 43-44] ; and calcium carbonate [col. 3, lines 49-56].

**Regarding Claim 42:** Stewart discloses modified cellulose as methylcellulose present between .5% to 5% of the total additive composition [col. 6, Table].

**Regarding Claims 43 and 44:** Stewart discloses food products such as gravies, soups, bakery fillings, spreads and beaked goods etc..., which can contain the food additive [col. 1, lines 10-17] containing the ingredients as discussed above in Claim 35.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. **Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Edwards et al. (US 4,060,203).**

**Regarding Claim 36:** Stewart discloses a food additive as discussed above but does not disclose the bean powder present from 80% to 90% of the total weight of the additive. However, it would have been obvious to use a high amount of bean powder in the additive because beans have many desirable properties that enable it to retain moisture in food such as its starch content which contributes to gel forming or thickening and its protein content which contributes to water binding capacity, gel formation, dough formation [Edwards et al. col. 1, lines 30-33].

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the percentage of bean powder in the food additive for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272.

6. **Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Edwards et al. (US 4,060,203) and as**

**evidenced by Cookstr beta 2001 <http://www.cookstr.com/recipes/lima-beans-with-tomatoes-and-dill>.**

**Regarding Claim 37:** Stewart discloses a food additive as discussed above but does not disclose lima beans. However, Edwards discloses lima beans [col. 2, lines 50-54].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teaching of Stewart and Edwards to modify the bean powder of Stewart to specify lima bean powder because it is a low fat/high protein bean [col. 2lines 3-6]and would therefore not contribute a significant amount of fat to the product. Advantageously, lima beans would contribute nutritionally due to its protein and starch content, its mealy texture [Cookstr beta] would contribute to the texture of food products like dough and because of the bland taste of dry lima beans [Cookstr beta] it would not over power the flavor of the food product.

**7. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Kazemzadeh ( US 2002/0164402).**

**Regarding Claims 38 and 39:** Stewart discloses a water soluble vegetable in general but does not teach where a potato fiber is present between 3 to 12%. However, Kazemzadeh discloses a potato fiber present between 15 and 45% [0018, 0021].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Stewart and Kazemzadeh before him or her to modify the vegetable of Stewart to include potato fiber because when added to a food product

potato fiber will absorb water present through out the food [Kazemzadeh pg 3, para 0029] thus contributing to the overall moisture retention in the food.

Although, Stewart and Kazemzadeh do not disclose the exact range of potato fiber as in the recited claim it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the percentage of potato fiber based on the food product for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272.

**8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778).**

**Regarding Claim 40:** Stewart discloses a food additive as discussed above and discloses calcium carbonate present from .5% to 5% of the total composition [col.6, Table]. Although Stewart does not disclose the exact range of calcium carbonate being 2% to 10%, one having ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by Stewart overlaps the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. *In re Malagari* 182 USPQ 549,553.

**9. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Ang et al. (US 5,019,406) and Ohlin et al. (US 6,123,975).**

**Regarding Claim 45:** Stewart discloses a food additive as discussed above but does not disclose where the food additive is added to a group selected from a base dough

at .5% to 5.0%, or to a base batter at .75% to 8.5%, to a base potato dough at .5% to 3 %; filling or topping for a dough product comprising said food additive composition at 1.0% to 5.0%; a processed food comprising said food additive composition as a dusting or coating at 0.1% to 1.5%; a finished or part finished food product comprising said food additive composition in a microwave heatable packaging material; a premix for making a microwave heatable processed food comprising said food additive composition in combination with a base ingredient of a processed food; and a premix for making a microwave heatable processed food comprising said food additive composition in combination with a base ingredient of a processed food in which the base ingredient is flour, and the food additive is present at 1% to 9%.

However, Ang discloses a base batter formulation where the additive is at 3% [col.4, lines 45-50] and Ohlin discloses a food additive that is present in an amount of 2% to 20% in a dough product [col. 4, lines 23-25; col. 8, lines 25-27] and discloses the food additive as usable in microwave heated food products [Ohlin col. 3, lines 46-50].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Stewart, Ang, and Ohlin before him or her to modify the incorporation of the food additive of Stewart to further include the disclosed food additive proportions in Ang and Ohlin because the food additive is intended to improve the taste, shape, appearance and rheologic texture of a product heated by microwave [Ang col. 2, lines 62-67]; [Ohlin col.4, lines 62-63], not to replace or overpower the food product in which it is used. Modification of Stewart, Ang, and Ohlin in using of the food additive in a microwave heated food product as disclosed in Ohlin is also obvious because the additive gives a product with a texture, appearance and taste comparable to

that found in food compositions that are heated by conventional methods [col. 4, lines 62-65]. The dual application of the food additive in both microwave and conventional heating methods would be very advantageous as such a versatile application would be attractive to the consumer.

**10. Claims 46, 47, 48, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Kazemzadeh (US 2002/0164402) and in further view of Ohlin et al. (US 6,123,975).**

**Regarding Claim 46:** Stewart discloses a food additive containing a water soluble vegetable as discussed above but does not disclose where a potato fiber is present between 3 to 12% nor where a method of preparing processed foods for heating or cooking in a microwave oven, the method comprising incorporating into a food or ingredient for a food a suitable amount of a food additive composition having bean powder; water absorbent vegetable fiber, one or more inorganic calcium compounds; and modified cellulose, where bean powder is present in a proportion of between 50 to 90% by weight based on the total weight of additive. However, Kazemzadeh discloses a potato fiber present between 15 and 45% [0018, 0021]. Ohlin discloses preparing fully or partially baked products for reheating in a microwave [col. 4, lines 51-55, 60-61] and incorporating into a food product an additive [col. 4, lines 56-59].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Stewart and Kazemzadeh and Ohlin before him or her to modify the vegetable of Stewart to include potato fiber because when added to a food product will absorb water present through out the food [Kazemzadeh pg 3, para 0029] thus contributing to the overall moisture retention in the food and to modify Stewart



and Kazemzadeh by using of the food additive in a microwave heated food product as disclosed in Ohlin is also obvious because the additive gives a product with a texture, appearance and taste comparable to that found in food compositions that are heated by conventional methods [col. 4, lines 62-65]. The dual application of the food additive in both microwave and conventional heating methods would be very advantageous as such a versatile application would be attractive to the average consumer.

Although, Stewart and Kazemzadeh do not disclose the exact range of potato fiber as in the recited claim it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the percentage of potato fiber based on the food product for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272.

**Regarding Claim 47:** Stewart discloses a food additive as discussed above but does not disclose where the additive is added between .15% and 10% depending on the food product. Ohlin discloses a food additive that is present in an amount of 2% to 20% in a dough product [col. 4, lines 23-25; col. 8, lines 25-27]. Kazemzadeh discloses potato fiber as discussed above.

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Stewart, Kazemzadeh and Ohlin before him or her to include the disclosed food additive proportions as in Ohlin because the food additive is intended to improve the taste, shape, appearance and rheologic texture of a product heated by microwave [Ohlin col.4, lines 62-63], not to replace or overpower the food product in which it is used.

**Regarding Claim 48:** Stewart discloses a food additive as discussed above but does not disclose where the additive is added to base dough formulations at 0.5% to 5.0%, to base batter formulations at 0.75% to 8.5%, to base potato dough formulations at 0.5% to 3.0%, to fillings/toppings at 1.0% to 5.0%, or to subsequent dough processing steps at 0.1% to 1.5%. Ohlin discloses a food additive that is present in an amount of 2% to 20% in a base dough product [col. 4, lines 23-25; col. 8, lines 25-27]. Kazemzadeh discloses potato fiber as discussed above.

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Stewart, Kazemzadeh and Ohlin before him or her to include the disclosed food additive proportions as in Ohlin because the food additive is intended to improve the taste, shape, appearance and rheologic texture of a product heated by microwave [Ohlin col.4, lines 62-63], not to replace or overpower the food product in which it is used.

**Regarding Claim 50:** Stewart discloses a food additive as discussed above but does not disclose where processed foods are baked or fried, then cooled frozen and packaged. However, Ohlin discloses dough containing an additive [col. 6, lines 15-17] that is then baked [col. 6, 26-28] and cooled frozen and packaged [col. 6, lines 29-31].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Stewart, Kazemzadeh and Ohlin before him or her to modify the treatment of food incorporating the additive to allow for the cooled , frozen and packaged state as in Ohlin because the additives of Stewart and Kazemzadeh are advantageously used in products that are frozen, because during the cooling of dough products water is retained within the product [Ohlin col. 1, lines 45-51] and when used

in conjunction with the additive, the normal leaching out and hardening of bread does not occur to the same extent [Ohlin col. 3, lines 35-45]. Further, baking, cooling and packaging are usually methods in manufacturing and supplying the product to customers.

**11. Claims 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,876,778) in view of Kazemzadeh (US 2002/0164402) and in further view of Ohlin et al. (US 6,123,975) and Koumarianos (U.S. Patent Number 6,488,957).**

**Regarding Claim 49:** Stewart discloses a food additive as discussed above but does not disclose where the additive is dusted on the surface. Kazemzadeh and Ohlin disclose as discussed above but do not disclose dusting on the surface. However, Koumarianos discloses a food additive that can be sprinkled onto food being cooked [col. 4, lines 24-27].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Stewart, Kazemzadeh, Ohlin and Koumarianos before him or her to modify the mode of application of the food additives of Stewart, Kazemzadeh, Ohlin for the sprinkling of the food additive disclosed in Koumarianos because the food additives in the former art are presented in powder form but their disclosures call for blending or mixing the powdered mixtures in with a food product [Stewart col. 6, lines 8-18; Kazemzadeh pg.2, 0014; Ohlin col. 4, line 15;] . The food additive in Koumarianos contains many of the ingredients contained in the referenced art. For instance the food additive is made up of a mixture of beans including lima beans and grains [Koumarianos col. 4. lines 58 – 60 and 65], is in a powder form and is

used in either processed or processing food [col. 4, lines 22-24]. Incorporating a sprinkling method for the food additive would provide more versatility in applying the additive to food products in any form [Koumarianos; col. 4, lines 23-25].

### ***Response to Arguments***

1. Applicant has overcome the objection to the disclosure in specification by amending to include section headings.
2. Applicant's arguments see pages 7-9 of Remarks/Arguments filed 3/9/09 with respect to claims 35, 36, 38-41, 43 and 44 under Gare (US 2002/0127319) in view of Ang et al. (U.S. 5,019,406) and Lusas et al. (U.S. 5,296,253) have been considered but are moot in view of the new ground(s) of rejection. **New grounds of rejection** have been made as discussed above under Stewart (US 5,876,778) for claims 35, 39, 41, 43, 44. **New grounds of rejection** have been made as discussed above under Stewart (US 5,876,778) as evidenced by Edwards et al. (US 4,060,203) for claim 36. **New grounds of rejection** have been made under Stewart (US 5,876,778) in view of Kazemzadeh (US 2002/0164402) for claims 38 and 39. **New grounds of rejection** have been made under Stewart (US 5,876,778) (103 a) for claim 40.
3. Applicant's arguments see page 9 of Remarks/Arguments filed 3/9/09 with respect to claim 37 under Gare (US 2002/0127319) in view of Lusas et al. (U.S. 5,296,253) and Ang et al. (U.S. 5,019, 406) and in further view of Baker et al. (U.S. 5,902,629) have been considered but are moot in view of the new ground(s) of rejection. **New grounds of rejection** have been made as discussed above over Stewart (US 5,876,778) in view of Edwards et al. (US 4,060,203) and as evidenced by Cookstr 2001 for claim 37.

4. Applicant's arguments see page 10 of Remarks/Arguments filed 3/9/09 with respect to claims 42, 45-48 and 50 under Gare (US 2002/0127319) in view of Lusas et al. (U.S. 5,296,253) and Ang et al. (U.S. 5,019, 406) and Ohlin et al (U.S. 6,123,975) have been considered but are moot in view of the new ground(s) of rejection. **New grounds of rejection** have been made as discussed above under Stewart (US 5,876,778) for claim 42. **New grounds of rejection** have been made as discussed above under Stewart (US 5,876,778) in view of Ang et al. (US 5,019,406) and Ohlin et al. (US 6,123,975 for claim 45. **New grounds of rejection** have been made under Stewart (US 5,876,778) in view of Kazemzadeh (US 2002/0164402) and in further view of Ohlin et al. (US 6,123,975) for claims 46, 47, 48, 50.

5. Applicant's arguments see page 11 of Remarks/Arguments filed 3/9/09 with respect to claim 49 under Gare (US 2002/0127319) in view of Lusas et al. (U.S. 5,296,253), Ang et al. (U.S. 5,019, 406) and Ohlin et al (U.S. 6,123,975) in further view of Koumarianos (U.S. 6,488,957) have been considered but are moot in view of the new ground(s) of rejection. **New grounds of rejection** have been made as discussed above under Stewart (US 5,876,778), Kazemzadeh (US 2002/0164402), Ohlin et al. (US 6,123,975), and Koumarianos (U.S. Patent Number 6,488,957) for claim 49.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

7. Rivoche (US 2,798,814) disclosing the benefit of using methylcellulose/ "Methocel" as a gel former.

8. Kazemzadeh (US 6,274,189) disclosing the benefit of calcium carbonate as a processing aid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FELICIA C. KING whose telephone number is (571)270-3733. The examiner can normally be reached on Mon- Thu 7:30 a.m.- 5:00 p.m.; Fri 7:30 a.m. - 4:00 p.m. alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/FELICIA C KING/  
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